

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

ALFRED CLEMENT DURBIN,

Respondent,

v.

ROBERT LEE DEITRICK, JR,

Respondent;

and

AMERICAN FAMILY MUTUAL INSURANCE CO.,

Appellant.

DOCKET NUMBER WD71263

Date: October 26, 2010

Appeal from:
Johnson County Circuit Court
The Honorable Jacqueline A. Cook, Judge

Appellate Judges:
Division One: Karen King Mitchell, Presiding Judge, Lisa White Hardwick, Chief
Judge and Cynthia Martin, Judge.

Attorneys:
David R. Frye, Esq., Overland Park, KS, and James C. Spangler, Esq., Sedalia, MO,
for appellant.
James A. Montee, Esq., St. Joseph, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

ALFRED CLEMENT DURBIN

Respondent,

v.

ROBERT LEE DEITRICK, JR,

Respondent;

and

AMERICAN FAMILY MUTUAL INSURANCE CO.,

Appellant.

WD71263

Johnson County

Before Division One Judges: Karen King Mitchell, Presiding Judge,
Lisa White Hardwick, Chief Judge, and Cynthia Martin, Judge.

American Family Mutual Insurance Company appeals the circuit court's grant of summary judgment in favor of Alfred Durbin. Appellant contends the court erred in determining that four automobile liability policies issued by American Family contained ambiguous anti-stacking language and, therefore, must be construed against the insurer to permit stacking.

AFFIRMED.

Division One holds: While certain provisions in the American Family policies appear to generally prohibit the stacking of multiple liability policies, language in an Other Insurance provision could reasonably be understood by lay persons to indicate an exception to this general prohibition in the specific case where liability

coverage is afforded for injuries incurred through use of a vehicle not owned by a covered individual. This conflicting language creates an ambiguity as to whether stacking is permitted and, thus, the provisions must be construed against the insurer and in favor of the insured to allow stacking of the four liability policies.

The judgment is affirmed.

Opinion by: Lisa White Hardwick, Judge

October 26, 2010

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